

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

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Agency Contact

296-1291
Contact Phone Number

28-16-28b, 28-16-28e, 28-16-28f, 28-16-28g, 28-16-28h
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

These proposed regulations meet the requirements under the Clean Water Act at 40 CFR § 131.20 requiring states to update their water quality standards in a triennial review. The previous triennial review was completed in 2018, marking 2021 as the date to commence the subsequent triennial review. These regulations are used by the Department of Health and Environment for a multitude of functions under the Division of Environment including, but not limited to, informing and directing permitting decisions, determining impairment of state surface waters, and determining and granting variances in relation to these standards. Revisions made include minor grammatical and typographical errors in the register, addition of definitions in a document adopted by reference, and revisions to documents adopted by reference including the tables of numeric criteria, the surface water register, ammonia variance register, and implementation procedures.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)*

Reviewing and adopting or modifying, as necessary, these regulation changes are mandated by the federal government under the Clean Water Act at 40 CFR §131.20. Specifically, this review is required “at least once every 3 years.” No deviations are allowed from these federal government requirements and thus are not presented.

The “at least once every 3 years” is in accordance with the federal requirements, as specified above, and matches the practices of the neighboring states of Nebraska, Colorado, and Oklahoma. Currently, Missouri is attempting an approach of using the “at least” portion of “at least once every 3 years” by moving forward with a change when it is ready instead of making a broader encompassing package of all the applicable regulations at once.

Revisions to the Dissolved Oxygen criteria included a review of neighboring states and states at large with similar water bodies to those found in Kansas. It was found that almost all states follow the EPA recommendation for Dissolved Oxygen criteria as presented. A unique occurrence includes Oklahoma’s approach. However, the Oklahoma approach was considered for a Kansas methodology and is considered to greatly change the way sampling and calculations are done for the parameter. It would be



particularly cumbersome and costly to implement. Kansas reviewed the literature presented with EPA's criteria and revised to match the water bodies, aquatic life, and sampling capabilities presented in Kansas.

Revisions to the compliance schedule language allow greater flexibility to permitted dischargers as allowed under federal regulations. Currently, the Kansas regulations are more restrictive than the federal requirements. The proposed changes now reflect the flexibility granted federally and matches the methods adopted by most states. This will greatly ease the burden and bureaucratic time spent internally in the agency to allow facilities the needed time to make upgrades to meet discharge requirements.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The revisions to the regulations are expected to ease the bureaucratic burden on facilities with discharges to surface waters when required to upgrade to meet effluent requirements. Currently the limitation presented in the regulations is more stringent than municipalities can reasonably accommodate. The revisions now eliminate the need for EPA and department review and concurrence on a case-by-case basis without changing the facility's requirements to meet their discharge requirements.

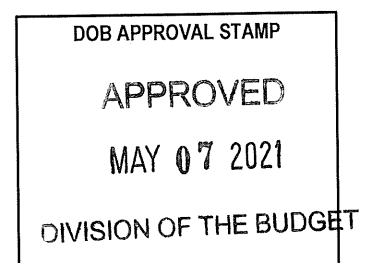
Revisions to the calculation of an ammonia limit for variance facilities and determination for economic eligibility to receive an ammonia multiple discharge variance are expected to potentially benefit facilities applying for the variance through clarifying the eligibility approval requirements thereby lending transparency and predictability to the community in meeting its discharge requirements.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

Improvements to the variance procedures allow more flexibility for determining affordability of a municipality in meeting water quality standards criteria. Without the option for a variance, facilities would be required to upgrade their facility immediately from lagoons to mechanical plants. With the proposed updates to the procedure, no additional costs are presented to local governments or their ratepayers discharging from lagoons.

Internal Department costs are expected to be negligible from the proposed changes. Variance procedure updates require additional data commonly found with other data already gathered in the process, such as through the Census.

Additionally, no new monitoring is required under proposed changes to the numeric tables. Implementation procedures have been updated to reflect internal processes already being done by the Department. Revisions to the surface water register do not result in expected costs either.



C. Businesses that would be directly affected by the proposed rule and regulation;

No businesses would be directly affected by the proposed regulations.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefit of these proposed revisions is the additional flexibility provided to variance candidates. Additionally, revisions to the numeric tables address previous EPA disapprovals or items with no action taken. By adopting these revisions the state will preclude EPA's prerogative to promulgate standards that could be more restrictive and costly to the state and various entities to implement. Revising the surface water register better reflects designated uses and locations of surface waters protected.

Revisions to the compliance schedule language is expected to reduce KDHE staff time required for granting compliance schedules to facilities by removing unnecessarily stringent timelines to match federal requirements instead.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The proposed regulation changes provides greater flexibility to municipalities seeking a variance to meet criteria instead of only census data taken every 10 years to better represent the dynamic population changes commonly seen in smaller towns across the state.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

There are no expected total annual implementation and compliance costs.

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

There are no expected total implementation and compliance costs.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Discharge monitoring reports provided by facilities were used to determine potential changes to their effluent limits following the proposed changes. It was determined that no facilities would see increased burden with the revisions proposed. Additionally, the state's surface water monitoring networks were also evaluated for capacity to assess the regulations currently approved compared to the proposed revisions. No additional changes are expected from the proposed changes.



Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

The total implementation costs will not exceed \$3M over any 2 year period, therefore a public hearing was not held at the time of submittal.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

When the notice of hearing for the regulations is published in the *Kansas Register*, standard agency procedure will be followed and the three organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement, and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

Prior to beginning the formal rulemaking process, a public meeting was held inviting the Kansas Water Office, Kansas Department of Wildlife, Parks, & Tourism, Kansas Professional Engineers, Friends of the Kaw, Kansas Sierra Club, U.S. Environmental Protection Agency, Kansas Livestock Association, and the Kansas Farm Bureau. Additionally, notice of the public meeting was published in the *Kansas Register*, posted on the Kansas Surface Water Quality Standards webpage along with associated documents for review, and a free and open to sign up for GovDelivery email list of interested persons was also utilized to better publicize this meeting. Notification through the *Kansas Register*, the webpage, and GovDelivery email list will be repeated, in addition to the other agency and state notice requirements for the public hearing scheduled during this process.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

If these regulations are not adopted, then the state is out of compliance with the Clean Water Act triennial review process. Failure to comply with the process once every 3 years results in EPA being required to promulgate standards upon the state. Should EPA promulgate more stringent standards, a likely cost would be accrued by the regulated community and the state through additional staff time consumed addressing the inconsistency between state and federal regulations.

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